

Assembly Bill No. 535

Passed the Assembly September 7, 2005

Chief Clerk of the Assembly

Passed the Senate September 6, 2005

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend, repeal, and add Section 12100 of, to add Division 3.5 (commencing with Section 12500) to, and to amend and repeal Section 12104 of, the Financial Code, relating to credit counselors.

LEGISLATIVE COUNSEL'S DIGEST

AB 535, Calderon. Licensure of credit counselors.

Existing law, the Check Sellers, Bill Payers and Proraters Law, provides for the licensure and regulation by the Commissioner of Corporations of persons engaged in, among other activities, the business of receiving money as an agent of the obligor for the purpose of paying bills, invoices, or accounts for the obligor. This law exempts from its requirements a nonprofit community service organization that meets specified requirements, including having consumer credit education and counseling as its principal functions. Under this law, the exemption becomes inoperative upon enactment of a statute requiring licensure and regulation of a nonprofit community organization providing consumer credit counseling.

This bill would require the licensure and regulation by the commissioner of an agency defined as a nonprofit community service organization meeting specified requirements, including having consumer education and credit counseling among its principal functions. The bill would require an agency licensed under its provisions to annually submit a declaration under penalty of perjury affirming its compliance with certain regulatory requirements. These provisions would become operative on July 1, 2006. Because perjury is punishable as a criminal offense, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 12100 of the Financial Code is amended to read:

12100. This division does not apply to any of the following:

(a) Persons or their authorized agents doing business under license and authority of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99), or under any law of this state or of the United States relating to banks, trust companies, building or savings associations, industrial loan companies, personal property brokers, credit unions, title insurance companies or underwritten title companies (as defined in Section 12402 of the Insurance Code), escrow agents subject to Division 6 (commencing with Section 17000), or finance lenders subject to Division 9 (commencing with Section 22000).

(b) (1) Any person licensed under Chapter 14A (commencing with Section 1851) of Division 1 or any agent of such person when selling any traveler's check (as defined in Section 1852) which is issued by such person.

(2) Any person licensed under Division 16 (commencing with Section 33000) or any agent of the person, when selling any payment instrument (as defined in Section 33059) which is issued by the person.

(c) The services of a person licensed to practice law in this state, when the person renders services in the course of his or her practice as an attorney-at-law, and the fees and disbursements of such person whether paid by the debtor or other person, are not charges or costs and expenses regulated by or subject to the limitations of this chapter; provided, these fees and disbursements shall not be shared, directly or indirectly with the prorater or check seller.

(d) Any transaction in which money or other property is paid to a "joint control agent" for disbursal or use in payment of the cost of labor, materials, services, permits, fees, or other items of expense incurred in construction of improvements upon real property.

(e) A merchant-owned credit or creditors association, or a member-owned or member-controlled or member-directed

association whose principal function is that of servicing the community as a reporting agency.

(f) Any person licensed under Chapter 1 of Part 6 of Division 2 of the Labor Code, when acting in any capacity for which he or she is licensed under that part.

(g) Any person licensed under Part 1, Division 4, of the Business and Professions Code, when acting in any capacity for which he or she is licensed under that part.

(h) A common law or statutory assignment for the benefit of creditors or the operation or liquidation of property or a business enterprise under supervision of a creditor's committee.

(i) The services of a person licensed as a certified public accountant or a public accountant in this state, when the person renders services in a course of his or her practice as a certified public accountant or a public accountant, and the fees and disbursements of the person, whether paid by the debtor or other person, are not charges or costs and expenses regulated by or subject to the limitations of this chapter; provided, these fees and disbursements shall not be shared, directly or indirectly, with the prorater or check seller.

(j) Any person licensed under Chapter 14 (commencing with Section 1800) of Division 1 or any agent of such person, when selling any check or draft which is drawn by the person and which is of the type described in paragraph (3) of subdivision (a) of Section 1800.5.

(k) Any group of banks each of which is organized under the laws of a nation other than the United States and one or more of which are licensed by the Commissioner of Financial Institutions of the State of California under Article 3 (commencing with Section 1750) of Chapter 13.5 of Division 1, or any agent of such group, when selling any foreign currency traveler's check (as defined in Section 1852) issued by such group, provided that each bank that is a member of the group is jointly and severally liable to pay such foreign currency traveler's check.

(l) Any transaction of the type described in Section 1854.1.

(m) This section shall remain in effect only until July 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2006, deletes or extends that date.

SEC. 2. Section 12100 is added to the Financial Code, to read:

12100. This division does not apply to any of the following:

(a) Persons or their authorized agents doing business under license and authority of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99), or under any law of this state or of the United States relating to banks, trust companies, building or savings associations, industrial loan companies, personal property brokers, credit unions, title insurance companies or underwritten title companies (as defined in Section 12340.5 of the Insurance Code), escrow agents subject to Division 6 (commencing with Section 17000), or finance lenders subject to Division 9 (commencing with Section 22000).

(b) (1) Any person licensed under Chapter 14A (commencing with Section 1851) of Division 1 or any agent of that person when selling any traveler's check (as defined in Section 1852) that is issued by that person.

(2) Any person licensed under Division 16 (commencing with Section 33000) or any agent of the person, when selling any payment instrument (as defined in Section 33059) that is issued by the person.

(c) The services of a person licensed to practice law in this state, when the person renders services in the course of his or her practice as an attorney-at-law, and the fees and disbursements of that person whether paid by the debtor or other person, are not charges or costs and expenses regulated by or subject to the limitations of this chapter; provided, these fees and disbursements shall not be shared, directly or indirectly with the prorater or check seller.

(d) Any transaction in which money or other property is paid to a "joint control agent" for disbursal or use in payment of the cost of labor, materials, services, permits, fees, or other items of expense incurred in construction of improvements upon real property.

(e) A merchant-owned credit or creditors association, or a member-owned or member-controlled or member-directed association whose principal function is that of servicing the community as a reporting agency.

(f) Any person licensed under Chapter 2.5 (commencing with Section 18895) of Division 8 of the Business and Professions

Code, when acting in any capacity for which he or she is licensed under that part.

(g) Any person licensed under Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code, when acting in any capacity for which he or she is licensed under that part.

(h) A common law or statutory assignment for the benefit of creditors or the operation or liquidation of property or a business enterprise under supervision of a creditor's committee.

(i) The services of a person licensed as a certified public accountant or a public accountant in this state, when the person renders services in a course of his or her practice as a certified public accountant or a public accountant, and the fees and disbursements of the person, whether paid by the debtor or other person, are not charges or costs and expenses regulated by or subject to the limitations of this chapter; provided, these fees and disbursements shall not be shared, directly or indirectly, with the prorater or check seller.

(j) Any person licensed under Chapter 14 (commencing with Section 1800) of Division 1 or any agent of that person, when selling any check or draft that is drawn by the person and that is of the type described in paragraph (3) of subdivision (a) of Section 1800.5.

(k) Any group of banks each of which is organized under the laws of a nation other than the United States and one or more of which are licensed by the Commissioner of Financial Institutions of the State of California under Article 3 (commencing with Section 1750) of Chapter 13.5 of Division 1, or any agent of that group, when selling any foreign currency traveler's check (as defined in Section 1852) issued by that group, provided that each bank that is a member of the group is jointly and severally liable to pay the foreign currency traveler's check.

(l) Any transaction of the type described in Section 1854.1.

(m) Any person licensed under Division 3.5 (commencing with Section 12500) when performing the functions of an agency, as defined in Section 12501.

(n) This section shall become operative on July 1, 2006.

SEC. 3. Section 12104 of the Financial Code is amended to read:

12104. A nonprofit community service organization that meets all of the following criteria shall be exempt from any requirements imposed on proraters pursuant to this division:

(a) The nonprofit community service organization incorporates in this state or any other state as a nonprofit corporation and operates pursuant to either the Nonprofit Public Benefit Corporation Law, Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code or the Nonprofit Mutual Benefit Corporation Law, Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code.

(b) The nonprofit community service organization limits its membership to retailers, lenders in the consumer credit field, educators, attorneys, social service organizations, employer and employee organizations, and related groups that serve educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes.

(c) The nonprofit community service organization has as its principal functions the following:

(1) Consumer credit education.

(2) Counseling on consumer credit problems and family budgets.

(3) Arranging or administering debt management plans. "Debt management plan" means a method of paying debtor's obligations in installments on a monthly basis.

(4) Arranging or administering debt settlement plans. "Debt settlement plans" means a method of paying debtor's obligations in a negotiated amount to each creditor on a one-time basis.

(d) The nonprofit community service organization receives from a debtor no more than the following maximum amounts to offset the organization's actual and necessary expenses for the services described in subdivision (c): a one-time sum not to exceed fifty dollars (\$50) for education and counseling combined in connection with debt management or debt settlement services; and for debt management plans, a sum not to exceed 8 percent of the money disbursed monthly, or thirty-five dollars (\$35) per month, whichever is less, and for debt settlement plans a sum not to exceed 15 percent of the amount of the debt forgiven for negotiated debt settlement plans. Nonprofit community service organizations shall not require any upfront payments or deposits on debt settlement plans and may only require payment of fees

once the debt has been successfully settled. For purposes of this subdivision, a household shall be considered one debtor. The fees allowed pursuant to this subdivision shall be the only fees that may be charged by a nonprofit community service organization for any services related to a debt management plan or a debt settlement plan.

(e) The nonprofit community service organization maintains and keeps current and accurate books, records, and accounts relating to its business in accordance with generally accepted accounting principles, and stores them in a readily accessible place for a period of no less than five years from the end of the fiscal year in which any transactions occurred.

(f) The nonprofit community service organization deposits any money received from a debtor for the services described in subdivision (c) in a noninterest-bearing trust account in a federally insured state or federal bank, savings bank, savings and loan association, or credit union, which account is maintained specifically for purposes of administering a debt management plan or debt settlement plan. The nonprofit community service organization shall provide the commissioner the following prior to engaging in business in this state and claiming this exemption:

(1) A written notice with the name, address, and telephone number of the bank, savings bank, savings and loan association, or credit union where the trust account is maintained, and the name of the account and the account number. The account information required in this paragraph shall be kept confidential pursuant to the laws governing disclosure of public records, including the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, and the rules adopted thereunder.

(2) An irrevocable written consent providing that upon the commissioner taking possession of the property and business of the nonprofit community service organization, all books, records, property and business, including trust accounts and any other accounts holding debtors' funds, shall be immediately turned over to the commissioner or receiver appointed pursuant to this division. The consent shall be signed by the nonprofit community service organization and the bank, savings bank, savings and loan association, or credit union where the trust account is maintained. The consent shall be binding upon the nonprofit community

service organization and the bank, savings bank, savings and loan association, or credit union, and any objection to it must be raised pursuant to the laws of the State of California and only in the forum in which the proceeding to take possession or appointment of the receiver has been filed. The nonprofit community service organization and the bank, savings bank, savings and loan association, or credit union shall further consent to the jurisdiction of the commissioner for the purpose of any investigation or proceeding under Sections 12105 and 12106 or any other provision of this division. The consent required by this paragraph shall include the name, title, and signature of an official of the bank, savings bank, savings and loan association, or credit union holding the authority to consent on behalf of that institution, and the name, title, and signature of the chief executive officer or president of the nonprofit community service organization.

(g) The nonprofit community service organization maintains at all times a surety bond in the amount of twenty-five thousand dollars (\$25,000), issued by an insurer licensed in this state. The bond shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of Section 12104 of the Financial Code, honestly and faithfully applying all funds received, honestly and faithfully performing all obligations and undertakings required under this section, and paying to the state and to any person all money that becomes due and owing to the state or to any person owed by the obligor of the bond.

(h) The nonprofit community service organization reports all of the following to the debtor at least once every three months, or upon the debtor's request, for any debt management plan or debt settlement plan:

- (1) Total amount received from the debtor.
- (2) Total amount paid to each creditor.
- (3) Total amount any creditor has agreed to accept as payment in full on any debt owed by the debtor.
- (4) Any amount paid to the organization by the debtor.
- (5) Any amount held in reserve.

(i) The nonprofit community service organization submits to the commissioner, at the organization's expense, an audit report containing audited financial statements covering the calendar year or, if the organization has an established fiscal year, then for

that fiscal year, within 120 days after the close of the calendar or fiscal year.

(j) The nonprofit community service organization submits with the annual financial statements required under subdivision (i) a declaration that conforms to Section 2015.5 of the Code of Civil Procedure, is executed by an official authorized by the board of the organization, and that states that the organization complies with this section. The annual financial statements shall also include a separate written statement that identifies the name, address, contact person, and telephone number of the organization.

(k) The nonprofit community service organization maintains accreditation by an independent accrediting organization, including either the Council on Accreditation or the International Standards Organization, with sector certification.

(l) The nonprofit community service organization does not engage in any act or practice in violation of Section 17200 or 17500 of the Business and Professions Code.

(m) The nonprofit community service organization inserts the following statement, in not less than 10-point type, in its debt management plan and debt settlement plan agreements: “Complaints related to this agreement may be directed to the California Department of Corporations. This nonprofit community service organization has adopted best practices for debt management plans and debt settlement plans, and a copy will be provided upon request.”

(n) The nonprofit community service organization adopts and implements on a continuous basis policies or procedures of best practices that are designed to prevent improper debt management or debt settlement practices and prevent theft and misappropriation of funds. Failure to do the following shall constitute improper debt management or debt settlement practices, as applicable:

(1) Obtain counselor certification conducted by a nationally recognized third-party certification program that certifies that all of the agency’s counselors receive proper training and are qualified to provide financial assistance prior to performing counseling services in this state.

(2) Disburse funds no later than 15 days after receipt of valid funds, or by a scheduled disbursement date, whichever is the greater amount of time.

(3) Transmit funds utilizing electronic payment processing when available.

(4) Implement an inception date policy, which shall include an agreement that a consumer's first disbursement pursuant to a debt management plan shall be received within 90 days of agreeing to the debt management plan service. The debt management plan shall include all items described in subdivision (h) and shall be provided to the consumer at the inception date of the plan. A description of best practices of the agency and of the consumer complaint resources shall be issued no later than the first payment date.

(5) Respond to and research any complaint initiated by a consumer within five business days of receipt of the complaint.

(6) Prohibit a policy requiring debt management plan consumers from being required to utilize additional ancillary services.

(7) Provide consumer access to debt management plan services regardless of the consumer's ability to pay fees related to the debt management plan, lack of creditor participation, or the amount of the consumer's outstanding debt.

(8) Implement policies that specifically prohibit credit counselors from receiving financial incentives or additional compensation based on the outcome of the counseling process.

(9) Prohibit the practice of paying referral fees to consumers or other third parties who refer new clients to the agency.

(10) Disclose in all written contracts with consumers the portion of funding for the agency that is provided by creditors.

(11) Disclose in all written contracts for debt management plans or debt settlement plans that these plans are not suitable for all consumers and that consumers may request information on other options, including, but not limited to, bankruptcy.

(12) Fully disclose all services to be provided by the agency and any initial and ongoing fees to be charged by the agency for services, including, but not limited to, contributions to the agency.

(13) Prohibit the agency or any affiliate of the agency from purchasing debt from a consumer.

(14) Prohibit the agency from offering loans to consumers involving the charging of interest.

(15) Prominently disclose in written contracts with consumers of any financial arrangement between the agency and any lender or any provider of financial services if the agency receives any form of compensation for referring consumers to that lender or provider of financial services.

(16) Provide professional liability insurance coverage.

(17) Provide the debtor a written individualized evaluation of his or her financial status and an initial debt management plan for the debtor's debts with specific recommendations regarding actions the debtor should take.

(18) Provide the debtor enrolling in a debt management plan a written reliable estimate of the length of time it will take to complete the plan and identifies the total debt owed to each creditor included in the plan, the proposed payment to each creditor, and any fees that would be charged for administering the plan. The estimate shall be provided prior to receipt of the debtor's first deposit.

(o) The nonprofit community service organization provides a copy of the best practices described in subdivision (n) to its debtor, upon request.

(p) The nonprofit community service organization resolves in a prompt and reasonable manner complaints from debtors relating to the organization's debt management plans or debt settlement plans.

(q) The nonprofit community service organization provides written notice to the commissioner within 30 days of dissolution or termination of engaging in the activities of a prorater, as defined in Section 12002.1.

(r) This section shall become inoperative upon the enactment of a statute requiring the licensure and regulation of nonprofit community service organizations providing consumer credit counseling.

(s) This section shall remain in effect only until July 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2006, deletes or extends that date.

SEC. 4. Section 12104 of the Financial Code is repealed.

SEC. 5. Division 3.5 (commencing with Section 12500) is added to the Financial Code, to read:

DIVISION 3.5. CREDIT COUNSELORS

CHAPTER 1. GENERAL PROVISIONS

12500. This division is known and may be cited as the Credit Counselors Law.

12501. The following definitions apply for the purposes of this division:

(a) “Agency” means a nonprofit community service organization that meets all of the following criteria:

(1) Is tax exempt under Section 501(c)(3) of the Internal Revenue Code.

(2) Its principal functions are the following:

(A) Consumer credit education.

(B) Counseling on consumer credit problems and family budgets.

(C) Arranging or administering debt management plans.

(D) Arranging or administering debt settlement plans.

(3) Limits its board of directors to retailers, lenders in the consumer credit field, educators, attorneys, social service organizations, employer and employee organizations, and related groups with expertise in finance or that serve educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes.

(4) Incorporates in this state or any other state as a nonprofit corporation and operates pursuant to either the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code) or the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code).

(b) “Commission” means the Department of Corporations.

(c) “Commissioner” means the Commissioner of Corporations.

(d) “Consumer” means an individual who owes money to one or more creditors for personal, family, or household purposes and includes an individual who owes money jointly with one or more other individuals.

(e) “Counselor” means an employee or agent of the agency who designs a debt management plan and provides consumer

budget planning, debt counseling, and personal financial education services.

(f) “Debt management plan” or “DMP” a method of paying a debtor’s obligations in installments on a monthly basis through a program whereby an agency agrees to engage in distribution services on behalf of a consumer, or multiple consumers in a joint account situation, with the consumer’s creditors and under which the consumer or consumer’s agent transfers funds of the consumer or control of those funds to the agency for distribution to the consumer’s creditors.

(g) “Debt settlement plan” means a method of paying a debtor’s obligations in a negotiated amount to each creditor on a one-time basis.

(h) “Licensee” means a person licensed under this division.

(i) “Person” means any individual, firm, corporation, limited liability company, partnership, association, trust, or legal or commercial entity or group of individuals however organized.

CHAPTER 2. LICENSING

12510. A nonprofit community service organization as defined in Section 12501 shall obtain a license from the commission. The application for the license shall include all of the following:

(a) The name and address of the agency. If the agency is a partnership, firm, or association, the application shall state the name and address of each partner or member. If the agency is a corporation or limited liability company, the application shall state the name and address of each director, officer, member, registered agent, and principal. If the agency is a business trust, the application shall state the name and address of each trustee and beneficiary.

(b) The address of each location where the agency will conduct the business.

(c) Audited financial statements for the agency for the most recent preceding fiscal year. If the agency does not have audited financial statements, the agency shall submit unaudited financial statements.

(d) Evidence that the agency meets all of the criteria listed in subdivision (a) of Section 12501.

(e) A current copy of the agency's standard DMP agreement.

(f) Proof of accreditation through a nationally recognized accrediting body such as the Council on Accreditation or the International Standards Organization. If the agency has not had the opportunity to obtain accreditation, it shall provide proof of registration with a recognized accrediting body along with a schedule under which it plans to obtain accreditation. The agency shall obtain accreditation within six months of the date of its application.

(g) Proof of counselor certification through a nationally recognized certification body approved by the commissioner.

(h) A written notice with the name, address, and telephone number of the bank, savings bank, savings and loan association, or credit union where the agency maintains its trust account, the name in which the account is held, and the account number. The account information required by this subdivision shall be kept confidential pursuant to the laws governing disclosure of public records, including the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, and the rules adopted thereunder.

(i) An irrevocable written consent providing that after licensure, if the commissioner takes possession of the property and business of the agency, all books, records, property, and business, including trust accounts and any other accounts holding debtors' funds, shall be immediately turned over to the commissioner or receiver appointed pursuant to this division. The consent shall be signed by the agency and the bank, savings bank, savings and loan association, or credit union where the agency maintains its trust account. The consent shall be binding upon the agency and the financial institution it designated. Any objection to the consent shall be made pursuant to the laws of this state in the forum in which the proceeding to take possession or appointment of the receiver has been filed. The agency and the financial institution it designated shall further consent to the jurisdiction of the commissioner for the purpose of any investigation or proceeding under this division. The consent required by this subdivision shall include the name, title, and signature of an official of the financial institution designated by the agency who is authorized to consent on behalf of the

institution and the name, title, and signature of the chief executive officer or president of the agency.

(j) Payment of an annual nonrefundable application fee of five hundred dollars (\$500) and an additional fee of one hundred dollars (\$100) for each additional agency location.

(k) Other information concerning the financial responsibility, background, experience, and activities of the agency and the persons identified in subdivision (a), as the commissioner may require.

12511. The commissioner shall approve or deny an application for licensure within 60 days after the date of receipt of an application satisfying the requirements of Section 12510. The commissioner may extend the 60-day period for 30 additional days. If the commissioner does not act on the application before the expiration of this period, the application shall be deemed approved, and the commissioner shall issue a license to the agency.

12512. (a) The commissioner may deny an application for a license for any of the following reasons:

(1) The application is not accompanied by the requisite fee payment.

(2) The application contains information that is materially erroneous or incomplete.

(3) An officer, director, owner, partner, member, or employee of the agency was convicted of a crime involving the violation of state or federal securities laws or of a crime involving moral turpitude or dishonesty, or a civil judgment in a case involving any of these matters was entered against him or her.

(4) The commissioner finds that the financial responsibility, experience, character, or general fitness of the agency or its officers, directors, owners, partners, members, employees, or agents is not adequate to demonstrate that the agency will be operated in compliance with this division.

(b) Within seven days of denying the application, the commissioner shall inform the applicant in writing of the reasons for the denial. Within 30 days of the date of receipt of the denial, the applicant may request a hearing pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

12513. A license issued pursuant to this division shall remain in force until it has been surrendered, revoked, or suspended. The surrender, revocation, or suspension of a license shall not effect any preexisting legal right or obligation of the licensee.

CHAPTER 3. REGULATION

12520. The licensee shall maintain and keep current and accurate books, records, and accounts relating to its business in accordance with generally accepted accounting principles and store them in a readily accessible place for a period of not less than five years from the ending date of the fiscal year in which any transaction recorded therein occurred.

12521. The licensee shall deposit any money received from a debtor for its services in a non-interest-bearing trust, maintained specifically for purposes of administering a debt management plan or debt settlement plan, in a federally insured state or federal bank, savings bank, savings and loan association, or credit union.

12522. The licensee shall maintain at all times a surety bond in the amount of twenty-five thousand dollars (\$25,000) issued by an insurer licensed in this state. The bond shall be conditioned upon the obligor honestly and faithfully applying all funds received, honestly and faithfully performing all obligations and undertakings required under this division, and paying to the state and to any person all money that becomes due and owing to the state or to any person owed by the obligor of the bond.

12523. The licensee shall not assess a consumer a fee or other charge or receive money from, or on behalf of, a consumer to offset the licensee's actual and necessary expenses except as provided in Section 12531.

12524. The licensee shall report all of the following to the debtor at least once every three months, or upon the debtor's request, for any debt management plan or debt settlement plan:

- (a) The total amount received from the debtor.
- (b) The total amount paid to each creditor.
- (c) The total amount any creditor has agreed to accept as payment in full on any debt owed by the debtor.
- (d) Any amount paid to the licensee by the debtor.
- (e) Any amount held in reserve.

12525. The licensee shall maintain accreditation by an independent accrediting organization, including either the Council on Accreditation or the International Standards Organization, with sector certification.

12526. The licensee shall not engage in any act or practice in violation of Section 17200 or 17500 of the Business and Professions Code.

12527. The licensee shall adopt and implement on a continuous basis, policies or procedures of best practices that are designed to prevent improper debt management or debt settlement practices and to prevent theft and misappropriation of funds. Failure to comply with any of the following requirements shall constitute improper debt management or debt settlement practices, as applicable:

(a) Obtain counselor certification conducted by a nationally recognized third-party certification program that certifies that all of the licensee's counselors receive proper training and are qualified to provide financial assistance prior to performing counseling services in this state.

(b) Disburse funds no later than 15 days after receipt of valid funds, or by a scheduled disbursement date, whichever is the longer duration of time.

(c) Transmit funds utilizing electronic payment processing when available.

(d) Implement an inception date policy, which shall include an agreement that a consumer's first disbursement pursuant to a debt management plan shall be received within 90 days of agreeing to the debt management plan service. The debt management plan shall include all items described in Section 12524 and shall be provided to the consumer prior to the inception date of the plan. A description of best practices of the licensee and of the consumer complaint resources shall be issued to the consumer not later than the first payment date.

(e) Respond to, and research, any complaint initiated by a consumer within five business days of receipt of the complaint and resolve each complaint in a prompt and reasonable manner.

(f) Prohibit a policy requiring a debt management plan consumer to utilize additional ancillary services.

(g) Provide access to debt management plan services regardless of the consumer's ability to pay fees related to the debt

management plan, lack of creditor participation, or the amount of the consumer's outstanding debt.

(h) Implement policies that specifically prohibit credit counselors from receiving financial incentives or additional compensation based on the outcome of the counseling process.

(i) Prohibit the practice of paying referral fees to consumers or other third parties who refer new clients to the licensee.

(j) Disclose in all written contracts with consumers the portion of funding that is provided by creditors for the licensee.

(k) Disclose in all written contracts for debt management plans or debt settlement plans that these plans are not suitable for all consumers and that consumers may request information on other options, including, but not limited to, bankruptcy.

(l) Fully disclose all services to be provided by the licensee and any initial and ongoing fees to be charged by the licensee for services, including, but not limited to, contributions to the licensee.

(m) Prohibit the licensee or any affiliate of the licensee from purchasing debt from a consumer.

(n) Prohibit the licensee from offering loans to consumers involving the charging of interest.

(o) Prominently disclose in written contracts with consumers of any financial arrangement between the agency and any lender or any provider of financial services if the licensee receives any form of compensation for referring consumers to that lender or provider of financial services.

(p) Provide professional liability insurance coverage.

(q) Provide the debtor a written individualized evaluation of his or her financial status and an initial debt management plan for the debtor's debts with specific recommendations regarding actions the debtor should take.

(r) Provide the debtor enrolling in a debt management plan a written reliable estimate of the length of time it will take to complete the plan and identify the total debt owed to each creditor included in the plan, the proposed payment to each creditor, and any fees that would be charged for administering the plan. The estimate shall be provided prior to receipt of the debtor's first deposit.

(s) Provide a copy of the nonprofit community service organization's best practices to its debtor, upon request.

12528. The licensee shall insert the following statement, in not less than 10-point type, in its debt management plan and debt settlement plan agreements:

“Complaints related to this agreement may be directed to the California Department of Corporations. This agency has adopted best practices for debt management plans and debt settlement plans, and a copy of this document will be provided to you upon request.”

12529. The licensee shall provide written notice to the commissioner within 30 days of the date of its dissolution or its termination of the activities for which it is licensed under this division.

12530. The licensee shall submit to the commissioner, at its expense, an audit report containing audited financial statements covering the calendar year or the fiscal year, if the licensee has an established fiscal year. The reports shall be submitted 120 days after the close of the calendar or fiscal year, as applicable. The licensee shall submit with the annual financial statements a declaration that conforms to Section 2015.5 of the Code of Civil Procedure executed by an official authorized by the board of the licensee stating that the licensee complies with this chapter. The annual audited financial statements shall also include a separate written statement that identifies the name, address, contact person, and telephone number for the licensee.

12531. (a) The licensee shall receive from a debtor not more than the following maximum amounts to offset its actual and necessary expenses for its services:

(1) A one-time sum not to exceed fifty dollars (\$50) for education and counseling services combined in connection with debt management or debt settlement services.

(2) A sum not to exceed 8 percent of the money disbursed monthly or thirty-five dollars (\$35) per month, whichever is less, for debt management plans.

(3) A sum not to exceed 15 percent of the amount of the debt forgiven for negotiated debt settlement plans.

(b) A licensee shall not require any advance payment or deposit on a debt settlement plan and may require payment of fees only upon successful settlement of the debt.

(c) The fees allowed pursuant to this section shall be the only fees that a licensee may charge for any services related to a debt

management plan or a debt settlement plan. The commissioner has the authority to change these fees from time to time to insure that consumers have continued access to these services.

(d) For purposes of this section, a household shall be considered one debtor.

12532. (a) Each licensee shall pay to the commissioner its pro rata share of all costs and expenses reasonably incurred in the administration of this division, as estimated by the commissioner, for the ensuing year and any deficit actually incurred or anticipated in the administration of the program in the year in which the assessment is made. The assessment shall be based on the number of debt management plan clients served by each licensee.

(b) On or before the 20th day of May in each year, the commissioner shall notify each licensee by mail of the amount assessed and levied against it and that amount shall be paid within 30 days thereafter. If payment is not made within 30 days, the commissioner may assess and collect a penalty, in addition to the assessment, of 1 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(c) If a licensee fails to pay the assessment on or before the 30th day of June following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the licensee. If, after an order is made, a request for hearing is filed in writing within 30 days, and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a licensee shall not conduct business pursuant to this division except as may be permitted by order of the commissioner. However, the revocation, suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided in this division.

(d) All money paid or collected under this division shall be deposited in the State Treasury to the credit of the State Corporations Fund. The administration of this division shall be supported out of the State Corporations Fund upon appropriation by the Legislature.

CHAPTER 4. PROHIBITIONS

12535. A creditor shall only enter into an agreement pursuant to a debt management plan or a debt settlement plan with an agency, as defined in subdivision (a) of Section 12501, if the agency is licensed under this division.

CHAPTER 5. ENFORCEMENT

12540. The commissioner may take any of the following actions at his or her discretion:

(a) Make public or private investigations within or outside of this state necessary to determine whether any person has violated, or is about to violate, any provision of this division or any rule or order promulgated pursuant to this division, or to aid in the enforcement of the law.

(b) Make public any information concerning any violation of this division or any rule or order promulgated pursuant to this division.

12541. (a) For the purpose of any investigation or proceeding under this division, the commissioner, or any officer designated by the commissioner, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records the commissioner deems relevant or material to the inquiry.

(b) In case of refusal to obey a subpoena issued to a person, the superior court may upon application by the commissioner, issue to the person an order requiring the person to appear before the commissioner, or an officer designated by the commissioner, and produce documentary evidence, if so ordered, or to give evidence relating to the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as contempt.

(c) No person is excused from attending or testifying, or from producing any document or record, before the commissioner in obedience of a subpoena of the commissioner, or any officer designated by the commissioner, in any proceeding instituted by the commissioner on the ground that the testimony or evidence required of the person may incriminate the person or subject the

person to a penalty or forfeiture. However, after validly claiming the privilege against self-incrimination, no individual may be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter, or thing for which the person is compelled to testify or produce pursuant to this division, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(d) The cost of any review, examination, audit, or investigation made by the commissioner under this division shall be paid to the commissioner by the person subject to the review, examination, audit, or investigation. The commissioner may maintain an action for the recovery of these costs in any court of competent jurisdiction. In determining the cost, the commissioner may use the actual amount of the salary or other compensation paid to the persons making the review, examination, audit, or investigation plus the actual amount of expenses, including overhead reasonably incurred in the performance of the work.

12542. (a) Whenever it appears to the commissioner that a licensee has engaged, or is about to engage, in any act or practice constituting a violation of this division, or any rule or order promulgated pursuant to this division, the commissioner may, at his or her discretion, revoke the license or bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance. Upon a proper showing, a permanent or preliminary injunction, a restraining order, or a writ of mandate shall be granted and a receiver or conservator may be appointed.

(b) The commissioner, upon learning of a person providing services in this state without a license required by this division, shall immediately file an action to require the cessation of those business operations until the person obtains a license from the commissioner.

12543. (a) If, upon inspection or investigation based upon a complaint or otherwise, the commissioner has cause to believe that a person is engaged in business without a license required by this division, or a person or licensee is violating any provision of this division or any rule or order promulgated pursuant to this division, the commissioner may issue a citation to that person or licensee in writing describing with particularity the basis of the

citation. Each citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed two thousand five hundred dollars (\$2,500) or, if the violation is willful, not to exceed ten thousand dollars (\$10,000).

(b) If within 30 days from the receipt of the citation, the person or licensee cited fails to notify the commissioner that he or she intends to request a hearing, the citation shall be deemed final. Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.

12544. In any action brought under this division, the commissioner is entitled to receive costs, which in the discretion of the administrative or civil court, shall include an amount representing reasonable attorney's fees and any related expenses incurred in the action.

12545. The remedies available to the commissioner pursuant to this chapter are not exclusive and may be sought and employed in any combination deemed advisable by the commissioner to enforce the provisions of this division.

12546. Any amounts collected by the commissioner in any action shall be paid into the State Corporations Fund.

12547. This division shall become operative on July 1, 2006.

SEC. 6. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2005

Governor